

**STATE OF CALIFORNIA  
DEPARTMENT OF INDUSTRIAL RELATIONS  
DIVISION OF WORKERS' COMPENSATION**

**INITIAL STATEMENT OF REASONS**

**SUBJECT MATTER OF PROPOSED REGULATIONS**

**Title 8, California Code of Regulations, Sections 9785, 9785.2, 9785.3, 9786, and 9787:**

**Reporting Duties of the Primary Treating Physician; Primary Treating Physician's Progress Report; Primary Treating Physician's Permanent and Stationary Report, Petition for Change of Primary Treating Physician; and Appeal from Administrative Director's Order Granting or Denying Petition for Change of Primary Treating Physician.**

**BACKGROUND TO REGULATORY PROCEEDING**

Labor Code section 4600 provides that “[a]fter 30 days from the date the injury is reported, the employee may be treated by a physician of his or her own choice or at a facility of his or her own choice ....” Labor Code section 4061.5 requires a primary treating physician to render opinions on all medical issues necessary to determine the employee's eligibility for compensation in compliance with regulations promulgated by the Administrative Director. Labor Code sections 4061 and 4062 specify procedures to be followed when a party disputes a medical determination of the primary treating physician. California Code of Regulations, Title 8, section 9785 (Section 9785) sets forth the reporting duties of the primary treating physician. The primary treating physician is required to submit his or her treating reports in a specified narrative format or using the “Primary Treating Physician’s Report” form (DWC Form PR-2) as set forth in Section 9785.2. Further, the primary treating physician may submit his or her permanent and stationary report using the “Primary Treating Physician’s Permanent and Stationary Report” form (DWC Form PR-3), as set forth in Section 9785.3.

Labor Code Section 4603 provides that a claims administrator desiring a change of primary treating physician may petition the Administrative Director, who upon a showing of good cause, may grant the petition. Section 9786 establishes the procedures for filing and responding to petitions for change of primary treating physicians. Section 9786 further outlines the grounds upon which the Administrative Director may find good cause to grant a petition. Section 9787 addresses the procedures for appealing an order granting or denying a petition for change of primary treating physician issued by the Administrative Director.

## **(1) Section Amended: 9785. Reporting Duties of the Primary Treating Physician**

### **Problem Addressed/Factual Basis for Necessity**

In *Tenet/Centinela Hospital Medical Ctr. v. Rushing* (2000) 80 Cal.App.4<sup>th</sup> 1041, the Court of Appeal held, based on Section 9785, that when a primary treating physician declared the employee's injury permanent and stationary, released the employee to return to work, and prescribed "no further doctor-involved treatment or visits," but made provisions for future medical treatment (future physicians visits, anti-inflammatory medications, and possible physical therapy), that employee was "discharged" and was thus required to comply with the provisions of Section 9785, subdivision (b), and Labor Code sections 4061 and 4062, to change primary treating physician. The *Tenet* decision interpreted Section 9785 to state that an employee is entitled to change his or her primary treating physician until the primary treating physician "discharges" the employee. The Court of Appeal further indicated that Section 9785 employs the terms "continuing treatment," and "further treatment;" not "future treatment," and that the terms "continuing" and "further" treatment "denote a treatment protocol that is ongoing, uninterrupted and unceasing." Thus, the Court of Appeal concluded that an employee "who no longer needs continuing treatment is considered to have been discharged, even where the physician articulates a need for future medical treatment." That is, the Court of Appeal determined that when a primary treating physician determines that the employee is in need of future medical treatment, "medical attention which would be required at a later date," the employee is not entitled to exercise his or her rights to change primary treating physicians until the dispute is resolved following the procedures of Labor Code sections 4061 or 4062.

The interpretation of the Section 9785(b) by the Court of Appeal in *Tenet*, that an employee who has been determined to need "future treatment" cannot change doctors, is contrary to the interpretation of the subdivision intended by this agency. The *Tenet* decision highlights the tension between the right of an injured worker to freely select a treating physician under Labor Code section 4600, and the mandatory dispute resolution procedures in Labor Code sections 4061 and 4062. The *Tenet* decision evidences the need for further clarification of the regulation to prevent misinterpretation of this agency's intent in enacting this regulation.

Moreover, based on the reasons set forth above, it has been determined that further clarification of the procedures which must be followed when either party disputes a determination by the primary treating physician is needed to guide the public on the interface between the employee's "free choice" of physician and dispute resolution.

### **Purpose of Amendments to Section 9785**

Proposed amendments to Section 9785 will clarify the reporting duties of the primary treating physician, including but not limited to when an employee may change primary treating physicians, and will further clarify the procedures which must be followed when either party disputes a determination by the primary treating physician.

## **Section 9785(a)**

### **Problem Addressed/Factual Basis for Necessity**

This subdivision defines key terms used in the regulation. The current definitions are not sufficient to provide clear guidance to the public. New terms have been introduced in the proposed amendments to Section 9785 based on the need to clarify the regulation in light of the *Tenet* decision. The definitions of these terms have been added as subparts of subdivision 9785(a) to ensure the meaning of these terms are clear to the regulated public.

### **Specific Purpose of Amendments to Section 9785(a)**

The following new terms and definitions have been added to this subdivision because these terms have been introduced throughout the amendments to Section 9785. The terms and definitions are added to this subdivision to ensure that the meaning of these terms are clear to the regulated public.

9785(a)(2): The text of this subpart refers to the employee as an “injured” employee. Because the remaining text of the entire regulation employs the word “employee,” as opposed to the phrase “injured employee,” to refer to the injured worker, Section 9785(a)(2) has been amended for consistency purposes to delete the word “injured.”

9785(a)(4): This subpart has been added to Section 9785(a) to define the term “medical determination” as a medical decision made by the primary treating physician which affects the employee’s eligibility for compensation.

9785(a)(5): This subpart has been added to Section 9785(a) to define the term “released from care” as a medical determination made by the primary treating physician that the employee’s condition is permanent and stationary without need for continuing or future medical treatment.

9785(a)(6): This subpart has been added to Section 9785(a) to define the term “continuing medical treatment” as presently planned treatment as determined by the primary treating physician, that is reasonably required to cure or relieve the employee from the effects of the injury.

9785(a)(7): This subpart has been added to Section 9785(a) to define the term “future medical treatment” as medical treatment determined by the primary treating physician which may be required or anticipated in the future.

9785(a)(8): This subpart has been added to Section 9785(a) to define the term “permanent and stationary status” as a determination by the primary treating physician that the employee has reached maximum medical improvement.

## **Section 9785(b)**

### **Problems Addressed/Factual Basis of Necessity**

Currently, Section 9785(b) requires that there shall be no more than one primary treating physician at a time. The section requires that where the primary treating physician discharges the employee from further treatment and there is a dispute concerning need for continuing treatment, the employee cannot choose a new primary treating physician unless and until the dispute is resolved. The section further requires that if it is determined that there is no further need for continuing treatment, the physician who discharged the employee remains the primary treating physician, and if it is determined that the employee is in further need for continuing treatment, the employee may choose a new primary treating physician.

Based on the *Tenet* decision, it appears that Section 9785(b) causes confusion as to when the employee may or may not exercise his or her right to change primary treating physicians under Labor Code section 4600 in light of the restrictions imposed by Labor Code sections 4061 and 4062. Moreover, there appears to be confusion as to the proper procedure which must be followed when disputes arise regarding medical determinations made by the primary treating physician.

### **Specific Purpose of Amendments to Section 9785(b)**

Proposed amendments to Section 9785(b) will clarify when an employee may change his or her primary treating physician. Proposed Section 9785(b) has been divided into four subparts which explain possible scenarios under which the employee may or may not exercise his or her right to change primary treating physicians under Labor Code section 4600. Proposed amendments to Section 9785(b) further clarify the process which must be followed when disputes develop regarding medical determinations made by the primary treating physician.

9785(b)(1): This subpart sets forth the requirement that an employee may not have more than one primary treating physician at the same time.

9785(b)(2): This subpart clarifies that an employee may change primary treating physicians at any time provided the primary treating physician has determined that the employee is in need of continuing or future medical treatment.

9785(b)(3): This subpart sets forth the requirement that if an employee disputes a medical determination made by the primary treating physician, including a determination that the employee should be released from care, the dispute must be resolved under the applicable procedures set forth in Labor Code sections 4061, 4062. This subpart further sets forth the requirement that the employee may not designate a new primary treating physician until the dispute is resolved.

9785(b)(4): This subpart sets forth the requirement that if the claims examiner disputes a medical determination made by the primary treating physician, the dispute must be resolved under the applicable procedures set forth in Labor Code sections 4061, 4062. This subpart further sets forth the requirement that the employee may designate a new primary treating physician during the course of such procedures, provided the primary treating physician has determined that there is need for continuing or future medical treatment.

### **Section 9785(c)**

#### **Problems Addressed/Factual Basis of Necessity**

Section 9785(e) requires the primary treating physician to submit to the claims examiner an initial written report within 5 working days from the initial examination. Section 9785(f)(7) requires the primary treating physician to submit a written report to the claims examiner when the employer reasonably requests additional appropriate information. Section 9785(b)(8) requires the primary treating physician, who is providing continuing treatment to the employee, to submit a progress report no later than 45 days from the last report. As presently written, Section 9785(c) provides that the required reports be submitted only to the claims examiner.

Based on the decision issued by the Court of Appeal in *Pinkerton, Inc. v. Workers' Comp. Appeals Bd. (Samuel)* (2000) 89 Cal.App.4th 1019, this subdivision does not harmonize with the requirements of Labor Code sections 4061 and 4062. In the *Pinkerton* decision, the Court of Appeal suggested that the physician reporting regulations should harmonize with Labor Code sections 4061 and 4062, stating: "...sections 4061 and 4062, which specify different times in which represented and unrepresented employees may object to the primary treating physician's report [citation omitted] seem to require service of the report on a represented employee's attorney."

In light of the *Pinkerton* decision, it has been determined that it is more appropriate to have the treating physician also submit a copy of the required reports to the employee, or to the employee's attorney if represented, in order to harmonize this regulation with Labor Code sections 4061 and 4062, and to avoid confusion and/or disputes relating to the determinations and/or contents of the reports of the primary treating physician.

Further, it has been determined that the last sentence of this subdivision needs clarification to reflect that a claims administrator may designate any person or entity to be the recipient of its copy of the required treating report.

#### **Specific Purpose of Amendments to Section 9785(c)**

This subdivision is amended to reflect that the primary treating physician must send a copy of the required reports under this section to the employee in addition to the claims administrator. This subdivision is further amended to clarify that if the employee is known to be represented by an attorney, the treating physician must send the employee's

copy of the report to the employee's attorney. This subdivision is also amended to clarify the last sentence of the subdivision to reflect that a claims administrator may designate any person or entity to be the recipient of its copy of the required treating report.

#### **Section 9785(d)**

##### **Problems Addressed/Factual Basis for Necessity**

In the proposed amendments to Section 9785(c), the primary treating physician is required to send a copy of the required reports under this section to the employee, or to the employee's attorney if represented, in addition to the claims administrator. Section 9785(d) requires the primary treating physician to render opinions on all medical issues necessary to determine the employee's eligibility for compensation in the manner prescribed in subsections (e), (f) and (g) of this section. Section 9785(d) further provides that the primary treating physician may transmit the required reports to the claims administrator by mail or FAX or by any other means satisfactory to the claims administrator, including electronic transmission. Amendments to Section 9785(d) are necessary to conform this subdivision to the proposed amendment of subdivision (c), by requiring the primary treating physician to transmit the required reports to the employee, or to the employee's attorney if represented, by mail or FAX or by any other means satisfactory to the claims administrator, employee or employee's attorney, including electronic transmission. Further, it has been determined that the text of this subdivision contains a clerical error in that the word "subsections" is used instead of the correct word "subdivisions."

##### **Specific Purpose of Amendments to Section 9785(d)**

This subdivision is amended to clarify that the primary treating physician may transmit reports to the employee, or to the employee's attorney if represented, in addition to the claims administrator, by mail or FAX or by any other means satisfactory to the claims administrator, employee or employee's attorney, including electronic transmission. This subdivision is further corrected for clerical error to substitute the word "subdivisions" for the word "subsections."

#### **Section 9785(e)**

##### **Problems Addressed/Factual Basis for Necessity**

Subpart (2) of Section 9785(e), requiring that each new primary treating physician submit a Form DLSR 5021 following the initial examination, is unclear in that it fails to state that the submission of Form DLSR 5021 is required in accordance with Section 9785(e)(1).

Subpart (3) of Section 9785(e) is inconsistent with the remaining text of the regulation because it refers to the employee as an "injured" employee.

Subpart (4) of Section 9785(e) does not specifically address when the primary treating physician is required to incorporate, or comment upon, the opinions of secondary physicians in the treating reports. For example, there are occasions when a primary treating physician may not promptly incorporate a secondary report and/or its findings in his or her progress reports, and wait until the permanent and stationary report to incorporate the secondary report and findings. The claims administrators may learn at a later time that the secondary physician had previously released the employee from treatment and/or found the employee's condition permanent and stationary. This may result in excess payments of compensation to the employee. On the other hand, there are employees who may be harmed where a secondary physician issues a report which would require payments of compensation to the employee, but that report is not timely transmitted by the primary treating physician to the claims administrator. An amendment is necessary to this subpart to require the secondary physicians' reports and findings be incorporated promptly in the progress reports.

In proposed amendments to Section 9785(c), the primary treating physician is required to send a copy of the required reports under this section to the employee, or to the employee's attorney if represented, in addition to the claims administrator. Section 9785(e)(4) requires the primary treating physician to submit the secondary physicians' reports to the claims administrator. Thus, an inconsistency between these two sections would be created unless the section is amended to consistently require the primary treating physician to also submit the secondary physicians' reports to the employee or to the employee's attorney if represented.

#### **Specific Purpose of Amendments to Section 9785(e)**

Section 9785(e)(2) is amended to clarify that each new primary treating physician shall submit a Form DLSR 5021 following the initial examination in accordance with subdivision (e)(1).

Section 9785(e)(3) is amended for consistency purposes to delete the word "injured" as it refers to the term "employee."

Section 9785(e)(4) is amended to clarify that the primary treating physician is required to promptly incorporate, or comment upon, the findings and opinions of secondary physicians in the treating reports. This subpart is further amended to require the primary treating physician to submit the secondary physicians' reports to the employee, or to the employee's attorney if represented, in addition to the claims administrator.

#### **Section 9785(f)**

#### **Problems Addressed/Factual Basis for Necessity**

In the proposed amendments to Section 9785(c), the primary treating physician is required to send a copy of the required reports under this section to the employee, or to

the employee's attorney if represented, in addition to the claims administrator. Currently, Section 9785(f) requires the primary treating physician to submit required reports under this section to the claims administrator. In order to avoid internal inconsistency in the regulation, it would be appropriate to consistently require the primary treating physician to also submit the required reports under this subdivision to the employee or to the employee's attorney if represented, in addition to the claims examiner.

Currently Section 9785(f)(5) requires the primary treating physician to issue a report when the employee is discharged. In light of the *Tenet* decision, it appears that the term discharged has created confusion as to the exact meaning of this term in reference to the employee's permanent and stationary status, and need for continuing and/or future medical treatment. In order to avoid confusion and to clarify the meaning of the regulation, it has been determined that the phrase "released from care" is a more appropriate term to refer to the point in time when the primary treating physician makes a medical determination that the employee's condition is permanent and stationary without need for continuing or future medical treatment.

Currently 9785(f)(7), requires the primary treating physician to issue a report when the "employer" reasonably requests additional appropriate information. However, the text of the remaining regulation employs the term "claims administrator," instead of the term "employer." This subpart is amended for consistency purposes to substitute the term "claims administrator" for the term "employer."

Moreover, it has been determined that there are times when a claims administrator may seek additional information which is not necessary to administer the workers' compensation claim, and a primary treating physician's failure to comply with this request may technically result in the granting of a petition for change of primary treating physician. In order to avoid imposing the harsh penalty of Section 9786—the removal of the primary treating physician—the subdivision must be amended to clarify that the requested additional information must be necessary to administer the claim. The phrase "necessary" information is defined as that information which directly affects the provision of compensation benefits as defined in Labor Code section 3207. Labor Code section 3207 defines "compensation," as "compensation under Division 4 and includes every benefit or payment conferred by Division 4 upon an injured employee, including vocational rehabilitation, or in the event of his [or her] death, upon his [or her] dependents, without regard to negligence."

Section 9785(b)(2), as amended, sets forth the requirement that an employee may change primary treating physicians at any time provided the primary treating physician has determined that the employee is in need of continuing or future medical treatment. Subpart (f)(8) must therefore be amended for consistency purposes to substitute the term "continuing" for the term "ongoing."

Currently section 9785(f)(8) does not mandate a timeframe for issuance of a report after an exam. It has been determined that there are occasions when a primary treatment physician may examine the employee on a certain date, but the progress report in



connection with that examination may not issue until 30 days later, or even later than 30 days. This causes confusion as to which is the date of the report for purposes of Section 9785(f)(8), and also may disrupt the provision and/or termination of benefits to the employee due to deferred communication of important information to the claims administrator. There is a need to mandate a timeframe for issuance of the report.

Currently Section 9785(f)(8) requires that reports submitted under this subdivision must be submitted on the "Primary Treating Physician's Progress Report" form (DWC Form PR-2) contained in Section 9785.2, or in the form of a narrative report. If a narrative report is used, it must be entitled "Primary Treating Physician's Progress Report" in bold-faced type, must indicate clearly the reason the report is being submitted, and must contain the same information using the same subject headings in the same order as DWC Form PR-2. Section 9785(f)(8) makes no provision for allowing that a request for information made pursuant to Section 9785(f)(7) be made in letter format. This is specifically cumbersome to primary treating physicians in situations when it is easier and more effective for the primary treating physician to respond to the request by letter. An amendment is necessary to allow a response to a request for information made pursuant to Section 9785(f)(7) to be made in letter format.

Further, Section 9785(f)(8), as presently written, requires that a progress report submitted using the DWC Form PR-2 must contain a declaration of penalty of perjury, to wit: "I declare under penalty of perjury that this report is true and correct to the best of my knowledge and that I have not violated Labor Code § 139.3." A letter format response to a request for information under Section 9785(f)(7), and a narrative report under Section 9785(f)(8), however, are not expressly required to contain the declaration under penalty of perjury. To resolve this inconsistency, an amendment is necessary to require that a letter format response to a request for information under Section 9785(f)(7), and a narrative report under Section 9785(f)(8), must contain the same declaration of penalty of perjury as contained in the DWC Form PR-2, to wit: "I declare under penalty of perjury that this report is true and correct to the best of my knowledge and that I have not violated Labor Code § 139.3."

### **Specific Purpose of Amendments to Section 9785(f)**

The amendments to this subdivision will clarify the reporting duties of the primary treating physician. The clarification will avoid delay in payment of workers' compensation benefits to the employee, and/or overpayment of benefits to the employee. Further, amendments to this subdivision will insure that all the parties involved in this process are well informed of the primary treating physician's determination so that procedural disputes and/or disputes resulting from lack of knowledge of the primary treating physician's determinations are reduced.

Section 9785(f) is amended to reflect that the primary treating physician is required to submit reports to the employee, or to the employee's attorney if represented, in addition to the claims administrator, when certain enumerated conditions occur.

Section 9785(f)(5) is amended for clarification purposes to substitute the term “released from care” for the term “discharged.”

Section 9785(f)(7) is amended for clarification purposes to substitute the term “claims administrator” for “employer.” This subpart is further amended to clarify that the requested additional information must be necessary to administer the claim. The phrase “necessary” information is defined as that information which directly affects the provision of compensation benefits as defined in Labor Code Section 3207.

Section 9785(f)(8) is amended for consistency purposes to substitute the word “continuing” for the word “ongoing.” The subpart is further amended to require the primary treating physician to sign and transmit a treating report to the appropriate parties within 20 days of the examination when an examination has been performed.

Section 9785(f)(8) is also amended to specify that a response to a request for information made pursuant to Section 9785(f)(7) may be made in letter format. Further, this subpart is amended to require that a letter format response to a request for information under Section 9785(f)(7), and a narrative report under Section 9785(f)(8), must contain the same declaration under penalty of perjury as contained in the DWC Form PR-2, to wit: “I declare under penalty of perjury that this report is true and correct to the best of my knowledge and that I have not violated Labor Code § 139.3.”

### **Section 9785(g)**

#### **Problems Addressed/Factual Basis for Necessity**

Currently, Section 9785(g) provides that when the primary treating physician determines that the employee's condition is permanent and stationary, the physician shall report any findings concerning the existence and extent of permanent impairment and limitations and any need for continuing or future medical care resulting from the injury. The information may be submitted on the "Primary Treating Physician's Permanent and Stationary Report" form (Form PR-3) contained in Section 9785.3, or using the instructions on the form entitled "Treating Physician's Determination of Medical Issues Form," Form IMC 81556, or in such other manner as provides all the information required by Title 8, California Code of Regulations, Section 10606.

It has been determined that there are occasions where a primary treating physician may delay in issuing a permanent and stationary report resulting in excess payments of temporary disability indemnity and/or permanent disability indemnity. For example, a primary treating physician might delay issuing a permanent and stationary report, which finds the Employee's condition permanent and stationary on the date of examination with no resulting permanent disability. Because the claims examiner is not aware of the finding of permanent and stationary status on the date of examination, without resulting permanent disability, the claims examiner continues to pay temporary disability indemnity beyond the date of permanent and stationary status. In this situation, the employee ends up with a windfall of payments of temporary disability indemnity, and

because there is no resulting permanent disability, the claims examiner is unable to credit the overpayment of temporary disability against permanent disability indemnity. To resolve this problem an amendment is necessary to require that the primary treating physician promptly issue the permanent and stationary report required under this subdivision.

Further, it has been determined that this subdivision contains a clerical error wherein it states “[w]hen the primary treating physician determines that the employee’s condition is permanent and stationary, the physician shall report any findings concerning the existence and extent of permanent disability, and limitations and any need for continuing or future medical treatment.” The use of the word “or” does not recognize that a primary treating physician may find that a combination of both continuing and future medical treatment may exist.

#### **Specific Purpose of Amendments to Section 9785(g)**

Section 9785 is amended to require that the primary treating physician promptly issue the permanent and stationary report required under this subdivision. This subdivision is further amended for clerical error to add the word “and” in the first sentence of the subdivision.

#### **Business Impact**

The amended regulation will not have a significant effect on businesses. It is possible that the regulation may result in a slight increase of costs to the treating physician as under the amended regulation he or she is required to submit a copy of the report to the employee or the employee’s attorney, in addition to the copy of the claims examiner. However, the amendments may reduce costs to the workers’ compensation community in general by reducing procedural disputes.

#### **Specific Technologies or Equipment**

The regulation does not mandate the use of specific technologies or equipment.

#### **Consideration of Alternatives**

In accordance with Government Code section 11346.5(a)(13), the Administrative Director must determine that no reasonable alternative it considers or that has otherwise been identified and brought to the attention of the Administrative Director would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action. No other alternatives have been identified by the Administrative Director to date.

## **(2) Section Amended: 9785.2 Primary Treating Physician's Progress Reports**

### **Problems Addressed/Factual Basis for Necessity**

Primary treating physicians are required to submit treatment reports using either the Primary Treating Physician's Progress Report form (DWC Form PR-2) set forth in Section 9785.2, or in a narrative format meeting specified content and format requirements. The DWC Form PR-2 employs the term "discharged," to refer to the point in time when the primary treating physician makes a medical determination that the employee's condition is permanent and stationary without need for continuing and future medical treatment. Proposed changes to 9785 introduces the new term "released from care," to refer to the point in time when the primary treating physician makes a medical determination that the employee's condition is permanent and stationary without need for continuing and future medical treatment. Thus, amendment to the DWC Form PR-2 is necessary for consistency purposes to substitute the term "released from care" for the term "discharged."

Further, it appears that it is not clear that the primary treating physician may use the DWC Form PR-2 to submit a response to a request for information under Section 9785(f)(7). This results in the primary treating physicians writing supplemental reports and or letters causing unnecessary increased burden on the primary treating physicians.

### **Specific Purpose of Amendments to Section 9785.2**

Primary treating physicians may to submit their required treating reports using the Primary Treating Physician's Progress Report form (DWC Form PR-2) as set forth in Section 9785.2. The DWC form PR-2 is amended for consistency purposes to substitute the term "released from care" for the term "discharged." The DWC Form PR-2 is amended to clarify when the primary treating physician is using the DWC Form PR-2 to submit a response to a request for information under Section 9785(f)(7). The DWC Form PR-2 may be used by checking the box indicating "Response to request for information," and by filling in the appropriate information in the DWC Form PR-2 in response to the request for information, and/or by attaching additional pages to the DWC Form PR-2, if necessary.

### **Business Impact**

The regulation will not have a significant effect on businesses.

### **Specific Technologies or Equipment**

The regulation does not mandate the use of specific technologies or equipment.

## **Consideration of Alternatives**

In accordance with Government Code section 11346.5(a)(13), the Administrative Director must determine that no reasonable alternative it considers or that has otherwise been identified and brought to the attention of the Administrative Director would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action. No other alternative has been identified by the Administrative Director to date.

### **(3) Section Amended: 9785.3 Primary Treating Physician's Permanent and Stationary Report**

#### **Problems Addressed/Factual Basis of Necessity**

Primary treating physicians are required to submit their permanent and stationary reports using the Primary Treating Physician's Permanent and Stationary Report form (DWC Form PR-3) as set forth in Section 9785.3. Page 3 of the DWC Form PR-3 contains a graph which the primary treating physician uses in describing the employee's subjective complaints to be used in rating the employee's disability. It has been determined that this graph, describing frequency and severity of symptoms, causes confusion which may result in the mischaracterization of the employee's subjective factors of disability.

Further, the current DWC Form PR-3 asks the primary treating physician to describe the medical treatment the employee may need in the future, but does not ask the doctor to describe continuing treatment. The current form does not recognize that a primary treating physician may find that an employee is in need of continuing medical treatment, in need of future medical treatment, or in need of a combination of both continuing and future medical treatment.

#### **Specific Purpose of Amendments to Section 9785.3**

The DWC Form PR-3 is amended by deleting the current graph, and by allowing the primary treating physician to write a narrative description of the subjective symptoms. The introductory language under "precipitating activity," is also amended to clarify when a specific activity may affect the subjective factors.

Further, the DWC Form PR-3 is amended to facilitate the reporting of a determination that the employee may need continuing medical treatment, that the employee may need future medical treatment, or that the employee may be in need of a combination of both continuing and future medical treatment. Continuing medical treatment is defined as treatment presently planned, and future medical treatment is defined as treatment which is not presently planned but may be required or anticipated at some time in the future.

#### **Business Impact**

The regulation will not have a significant effect on businesses.

### **Specific Technologies or Equipment**

The regulation does not mandate the use of specific technologies or equipment.

### **Consideration of Alternatives**

In accordance with Government Code section 11346.5(a)(13), the Administrative Director must determine that no reasonable alternative it considers or that has otherwise been identified and brought to the attention of the Administrative Director would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action. No other alternative has been identified by the Administrative Director to date.

### **(4) Section Amended: 9786. Petitions for Change of Primary Treating Physician**

#### **Problem Addressed/Factual Basis for Necessity**

##### **Section 9786(b)**

9786(b)(1): The current subpart is not clear as to whether good cause can be established by showing that the primary treating physician failed to comply with the permanent and stationary report requirements of Section 9785(g).

9786(b)(2): It has been determined that there are occasions when claims examiners filed Petitions for Change of Treating Physicians based on Section 9785(f)(8) violations which have occurred more than a year after the filing of the petition. Upon examination of the submitted records in those petitions, the primary treating physician is reporting appropriately under Section 9785(f)(8), except for the two violations which occurred more than a year ago. Under this subdivision, as presently written, the Administrative Director must grant the petition based on good cause sometimes to the detriment of the employee. In order to ameliorate this problem, an amendment to this subpart is necessary to specify that good cause to grant a petition which is based upon the failure of a primary treating physician to comply with Section 9785(f)(8) by failing to submit timely or complete progress reports on two or more occasions, those failures must have occurred within the 12-month period immediately preceding the filing of the petition.

9786(b)(3): Currently, this subpart contains a clerical error in that it does not clearly state that good cause to grant a petition includes a clear showing that the current treatment is not consistent with the treatment plan submitted pursuant to Section 9785, subdivisions (e) or (f).

##### **Section 9786(c)**

This subdivision merits further clarification to state what constitutes good cause for the granting of a Petition for Change of Primary Treating Physician.

9786(c)(3): Currently, there is no time limitation on when a claims examiner may file a petition alleging failure of the primary treating physician to timely issue the Doctor's First Report of Occupational Injury or Illness pursuant to Section 9785, subdivisions (e)(1) or (e)(2). Sometimes these petitions are filed a year after the doctor has been treating the employee and properly submitting progress reports under Section 9785(f)(8). Because there is no time limitation for the filing of these type of petitions, the Administrative Director is forced to grant the petitions sometimes to the detriment of the employee. To ameliorate this problem, this subpart is added to require that when an allegation of good cause is based upon failure to timely issue the Doctor's First Report of Occupational Injury or Illness pursuant to Section 9785, subdivisions (e)(1) or (e)(2), the petition setting forth such allegation must be filed within 90 days of the initial examination.

9786(c)(4): This subpart is added to require that failure to verify a letter response to a request for information pursuant to Section 9785(f)(7), failure to verify a narrative report pursuant to Section 9785(f)(8), or failure of the narrative report to conform to the format requirements of Section 9785(f)(8) does not constitute good cause to grant the petition unless the claims administrator submits documentation showing that the physician was notified of the deficiency in the reporting, and was allowed a reasonable time to correct the deficiency. These amendments are necessary to avoid the harsh result of depriving the employee of his or her choice of physician for technical violations.

#### **Section 9786(d)**

This subdivision allows the employee, the attorney of the employee if represented, and the primary treating physician to file a response to the petition no later than 20 days after service of the petition. As currently drafted, the subdivision does not allow specifically for the responding party to submit supportive documentary evidence relevant to the specific allegations raised in the petition. This subdivision is amended to clarify that the employee, his or her attorney, and/or the primary treating physician may include in the response supportive documentary evidence relevant to the specific allegations raised in the petition.

Further, it has been determined that after the filing of the petition and the response, some parties engage in a paper war wherein they continue filing documents re-arguing issues which have been properly developed in the petition and in the response. In order to avoid this problem, this subdivision is amended to clarify that, unless good cause to the contrary is shown, the Administrative Director will not consider any other documents filed except for the Petition for Change of Primary Treating Physician, the response, and any supportive documentary evidence filed with the petition and the response.

## **Specific Purpose of Amendments to Section 9786**

### **Section 9786(b)**

9786(b)(1): This subpart is amended to clarify that good cause can be established by showing that the primary treating physician failed to comply with the permanent and stationary report requirements of Section 9785(g).

9786(b)(2): This subpart is amended to specify that where good cause to grant a petition is based upon the failure of a primary treating physician to comply with Section 9785(f)(8) by failing to submit timely or complete progress reports on two or more occasions, those failures must have occurred within the 12-month period immediately preceding the filing of the petition.

9786(b)(3): This subpart is amended to clarify that good cause to grant a petition includes a clear showing that the current treatment is not consistent with the treatment plan submitted pursuant to Section 9785, subdivisions (e) or (f).

### **Section 9786(c)**

This subdivision is amended to number the first two paragraphs, and to add two more paragraphs clarifying what constitutes good cause for granting a Petition for Change of Primary Treating Physician.

9786(c)(3): This subpart is added to require that when an allegation of good cause is based upon failure to timely issue the Doctor's First Report of Occupational Injury or Illness pursuant to Section 9785, subdivisions (e)(1) or (e)(2), the petition setting forth such allegation must be filed within 90 days of the initial examination.

9786(c)(4): This subpart is added to require that failure to verify a letter response to a request for information pursuant to Section 9785(f)(7), failure to verify a narrative report pursuant to Section 9785(f)(8), or failure of the narrative report to conform to the format requirements of Section 9785(f)(8) does not constitute good cause to grant the petition unless the claims administrator submits documentation showing that the physician was notified of the deficiency in the reporting, and was allowed a reasonable time to correct the deficiency.

### **Section 9786(d)**

This subdivision is amended to clarify that the employee, his or her attorney, and/or the primary treating physician may file a response to the Petition for Change of Primary Treating Physician with the Administrative Director. This subdivision is further amended to allow the responding party to include supportive documentary evidence relevant to the specific allegations raised in the petition to be filed with the response. Also this subdivision is amended to clarify that, unless good cause is shown to the contrary, the Administrative Director will not consider any other documents filed except for the



Petition for Change of Primary Treating Physician, the response, and any supportive documentary evidence filed with the petition and the response.

### **Business Impact**

The regulation will not have a significant effect on businesses.

### **Specific Technologies or Equipment**

The regulation does not mandate the use of specific technologies or equipment.

### **Consideration of Alternatives**

In accordance with Government Code section 11346.5(a)(13), the Administrative Director must determine that no reasonable alternative it considers or that has otherwise been identified and brought to the attention of the Administrative Director would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action. No other alternative has been identified by the Administrative Director to date.

### **(5) Section Amended: 9787 Appeal from Administrative Director's Order Granting or Denying Petition for Change of Primary Treating Physician's Progress Reports**

### **Problem Addressed/Factual Basis of Necessity**

Section 9787 currently provides that an order denying or granting the claim's administrator's petition is final and binding unless the aggrieved party files an appeal with the Appeals Board, within 30 days from service of the decision in a manner prescribed by the Appeals Board pursuant to Section 10950. Section 10950 of the Appeals Board's Rules of Practice and Procedure is being amended to require that the appeal be filed within 20 rather than 30 days from service of the decision. An amendment is necessary to conform this section with the time limitation proposed by the Appeals Board in Section 10950.

### **Specific Purpose of Amendments to Section 9787**

Amendments are proposed to this section to conform with Section 10950 of the Appeals Board's Rules of Practice and Procedure which are being amended to require that the appeal be filed within 20 rather than 30 days from service of the decision.

### **Business Impact**

The regulation will not have a significant effect on businesses.

### **Specific Technologies or Equipment**

The regulation does not mandate the use of specific technologies or equipment.

### **Consideration of Alternatives**

In accordance with Government Code section 11346.5(a)(13), the Administrative Director must determine that no reasonable alternative it considers or that has otherwise been identified and brought to the attention of the Administrative Director would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action. No other alternative has been identified by the Administrative Director to date.